

PROPOSED AMENDMENT

SENATE AMENDMENTS TO S.B. 1019

(Reference to printed bill)

1 Page 1, between lines 1 and 2, insert:

2 "Section 1. Section 33-1201, Arizona Revised Statutes, is amended to
3 read:

4 33-1201. *Applicability*

5 A. This chapter applies to all condominiums created within this state
6 on or after January 1, 1986.

7 B. This chapter applies to all condominiums created before January 1,
8 1986 to the extent that **EITHER OF THE FOLLOWING APPLIES:**

9 1. This chapter does not conflict with the declarations, articles or
10 bylaws of the condominium.

11 2. **THE PROVISION OF LAW SPECIFICALLY STATES THAT IT APPLIES TO
12 CONDOMINIUMS CREATED BEFORE JANUARY 1, 1986.**

13 C. With respect to condominiums created before January 1, 1986, this
14 chapter applies to the extent the provisions of this chapter are not in
15 conflict with former chapter 4.1 of this title, in effect before January 1,
16 1986, or declarations, bylaws or plats of condominiums adopted pursuant to
17 former chapter 4.1 of this title. The provisions of former chapter 4.1 of
18 this title and the declarations, bylaws or plats adopted pursuant to that
19 chapter control, except as provided in subsection D of this section.

20 D. The provisions of former chapter 4.1 of this title, in effect
21 before January 1, 1986, do not apply to condominiums created on or after
22 January 1, 1986. The repeal of chapter 4.1 of this title does not invalidate
23 condominiums created pursuant to chapter 4.1 of this title or future
24 amendments to declarations, bylaws and plats of these condominiums if the
25 amendments are permitted by this chapter. **EXCEPT FOR AMENDMENTS TO THE
26 DECLARATION THAT ARE ALLOWED AND ADOPTED PURSUANT TO SECTION 33-1227,**
27 amendments shall be adopted in conformity with the procedures and
28 requirements specified in the declarations, bylaws and plats which were
29 adopted pursuant to former chapter 4.1 of this title. If amendments grant to

1 a person any rights, powers or privileges permitted by this chapter, all
2 correlative obligations, liabilities and restrictions in this chapter also
3 apply to that person.

4 E. Any unit owners' association created before January 1, 1986 may
5 elect to be subject to the provisions of this chapter by amending its
6 condominium documents to conform with the requirements of this chapter. The
7 amendment must be adopted in conformity with the condominium documents and
8 must be permitted by this chapter. If an amendment grants to a person a
9 right, power or privilege permitted by this chapter, all correlative
10 obligations, liabilities and restrictions in this chapter also apply.

11 Sec. 2. Section 33-1227, Arizona Revised Statutes, is amended to read:

12 33-1227. Amendment of declaration

13 A. Except in cases of amendments that may be executed by a declarant
14 under section 33-1220, by the association under section 33-1206 or section
15 33-1216, subsection D, or by certain unit owners under section 33-1218,
16 subsection B, section 33-1222, section 33-1223 or section 33-1228, subsection
17 B, and except to the extent permitted or required by other provisions of this
18 chapter, the declaration, including the plat, may be amended ~~only by a vote~~
19 ~~of the unit owners to which at least sixty seven per cent of the votes in the~~
20 ~~association are allocated, or any larger majority the declaration specifies~~
21 AS PRESCRIBED IN SUBSECTIONS C THROUGH G OF THIS SECTION. The declaration
22 may specify a smaller percentage ~~only if all of the units are restricted~~
23 ~~exclusively to nonresidential use.~~ The declaration may also provide that the
24 consent of the declarant is required to an amendment during any period of
25 declarant control pursuant to section 33-1243. Within thirty days after the
26 adoption of any amendment pursuant to this subsection, the association shall
27 prepare, execute and record a written instrument setting forth the amendment.

28 B. An action to challenge the validity of an amendment adopted by the
29 association ~~pursuant to this section~~ AFTER THE PERIOD OF DECLARANT CONTROL
30 shall not be brought more than one year after the amendment is recorded. AN
31 ACTION TO CHALLENGE THE VALIDITY OF AN AMENDMENT ADOPTED DURING THE PERIOD OF

1 DECLARANT CONTROL SHALL NOT BE BROUGHT MORE THAN ONE YEAR AFTER THE
2 TERMINATION OF DECLARANT CONTROL.

3 C. An amendment to the declaration shall be recorded in each county in
4 which any portion of the condominium is located ~~and is effective only on~~
5 ~~recording~~ in the same manner as required for the declaration under section
6 33-1211. AN AMENDMENT TO THE DECLARATION IS NOT EFFECTIVE UNTIL RECORDED
7 UNLESS BY ITS TERMS IT BECOMES EFFECTIVE ON A DATE SPECIFIED IN THE AMENDMENT
8 THAT IS AFTER THE DATE IT IS RECORDED.

9 D. Except to the extent expressly permitted or required by other
10 provisions of this chapter, an amendment shall not create or increase special
11 declarant rights, increase the number of units or change the boundaries of
12 any unit, the allocated interests of a unit or the uses to which any unit is
13 restricted, in the absence of unanimous consent of the unit owners.

14 E. An amendment shall not terminate or decrease any unexpired
15 development right, special declarant right or period of declarant control AS
16 PRESCRIBED IN THIS CHAPTER unless the declarant approves.

17 F. Amendments to the declaration required by this chapter to be
18 executed by the association shall be executed on behalf of the association by
19 any officer of the association designated for that purpose or, in the absence
20 of designation, by the president of the association.

21 G. NOTWITHSTANDING ANY PROVISIONS IN THE DECLARATION OR OTHER
22 CONDOMINIUM DOCUMENTS AND INCLUDING CONDOMINIUMS CREATED BEFORE JANUARY 1,
23 1986, THE FOLLOWING APPLY:

24 1. UNLESS THE DECLARATION SPECIFIES A SMALLER PERCENTAGE, THE UNIT
25 OWNERS MAY AMEND THE DECLARATION, INCLUDING BY ADDING OR REMOVING USE
26 RESTRICTIONS, IF AT LEAST SIXTY-SIX PER CENT OF THE UNIT OWNERS VOTE IN FAVOR
27 OF THE AMENDMENT AT A MEETING OF THE UNIT OWNERS.

28 2. THE ASSOCIATION SHALL DELIVER TO THE UNIT OWNERS, AT LEAST THIRTY
29 BUT NOT MORE THAN SIXTY DAYS BEFORE THE MEETING, BOTH WRITTEN NOTICE OF ANY
30 MEETING CALLED FOR THE PURPOSE OF AMENDING THE DECLARATION AND THE TEXT OF
31 ANY PROPOSED AMENDMENT.

1 3. AN AMENDMENT ADOPTED BY THE ASSOCIATION IS EFFECTIVE ON RECORDING.
2 THE DOCUMENTS RELATING TO THE AMENDMENT ARE TO BE KEPT WITH THE OTHER BOOKS
3 AND RECORDS OF THE ASSOCIATION FOR AT LEAST ONE YEAR AFTER RECORDING OF THE
4 AMENDMENT.

5 Sec. 3. Title 33, chapter 9, article 2, Arizona Revised Statutes, is
6 amended by adding section 33-1227.01, to read:

7 33-1227.01. Amendment to declaration by members

8 A. NOTWITHSTANDING ANY PROVISION IN THE COMMUNITY DOCUMENTS, FOR ANY
9 ASSOCIATION IN WHICH THE DECLARANT OWNS OR CONTROLS LESS THAN THREE PER CENT
10 OF THE SEPARATE UNITS, THE ASSOCIATION MAY AMEND THE DECLARATION BY A VOTE OF
11 AT LEAST TWO-THIRDS OF THE MEMBERSHIP.

12 B. THIS SECTION DOES NOT APPLY TO THE MODIFICATION OF PROVISIONS OF THE
13 COMMUNITY DOCUMENTS THAT DO ANY OF THE FOLLOWING:

14 1. EXPRESSLY REQUIRE DECLARANT CONSENT.

15 2. REGULATE THE TRANSITION FROM DECLARANT CONTROL OF THE CONDOMINIUM TO
16 NONDECLARANT OWNER CONTROL.

17 3. AFFECT THE USE OF AND ACCESS TO THE AMENITIES OF THE CONDOMINIUM AND
18 ANY PROPERTY NOT OWNED BY THE ASSOCIATION FOR THE GUESTS AND INVITEES OF THE
19 DECLARANT OR OF THE MEMBERS AS PROVIDED IN THE COMMUNITY DOCUMENTS, INCLUDING
20 USE AND ACCESS FOR MARKETING PURPOSES AND USE OF AND ACCESS TO EASEMENTS.

21 4. AFFECT THE USE OR DISPOSITION OF COMMON AREAS IN THE CONDOMINIUM.

22 5. AFFECT THE AMOUNT OR LEVEL OF ASSESSMENTS ON LOTS OWNED BY THE
23 DECLARANT.

24 Sec. 4. Section 33-1229, Arizona Revised Statutes, is amended to read:

25 33-1229. Rights of secured lenders

26 The declaration may require that all or a specified number or
27 percentage of the mortgagees, beneficiaries of deeds of trust or sellers
28 under contracts, as defined in section 33-741, for conveyance of real
29 property encumbering the units approve specified actions of the unit owners
30 or the association as a condition to the effectiveness of those actions, but
31 THIS requirement for approval shall not operate to either:

1 1. Deny or delegate control over the general administrative affairs of
2 the association by the unit owners or the board of directors.

3 2. Prevent the association or the board of directors from commencing,
4 intervening in or settling any litigation or proceeding, or receiving and
5 distributing any insurance proceeds pursuant to section 33-1253.

6 3. FOR CONDOMINIUMS CREATED BEFORE OR AFTER JANUARY 1, 1986, PREVENT
7 THE AMENDMENT OF THE DECLARATION IF THE AMENDMENT IS MADE PURSUANT TO SECTION
8 33-1227."

9 Renumber to conform

10 Page 7, between lines 9 and 10, insert:

11 "Sec. 7. Title 33, chapter 16, article 1, Arizona Revised Statutes, is
12 amended by adding section 33-1817, to read:

13 33-1817. Amendment to declaration

14 NOTWITHSTANDING ANY PROVISIONS IN THE DECLARATION OR OTHER COMMUNITY
15 DOCUMENTS, THE FOLLOWING APPLY:

16 1. UNLESS THE DECLARATION SPECIFIES A SMALLER PERCENTAGE, THE MEMBERS
17 OF AN ASSOCIATION MAY AMEND THE DECLARATION, INCLUDING BY ADDING OR REMOVING
18 USE RESTRICTIONS, IF AT LEAST SIXTY-SIX PER CENT OF THE MEMBERS VOTE IN FAVOR
19 OF THE AMENDMENT AT A MEETING OF THE MEMBERS.

20 2. THE ASSOCIATION SHALL DELIVER TO THE MEMBERS OF THE ASSOCIATION, AT
21 LEAST THIRTY BUT NOT MORE THAN SIXTY DAYS BEFORE THE MEETING, BOTH WRITTEN
22 NOTICE OF ANY MEETING CALLED FOR THE PURPOSE OF AMENDING THE DECLARATION AND
23 THE TEXT OF ANY PROPOSED AMENDMENT.

24 3. AN AMENDMENT ADOPTED BY THE ASSOCIATION IS EFFECTIVE ON RECORDING.
25 THE DOCUMENTS RELATING TO THE AMENDMENT ARE TO BE KEPT WITH THE OTHER BOOKS
26 AND RECORDS OF THE ASSOCIATION FOR AT LEAST ONE YEAR AFTER RECORDING OF THE
27 AMENDMENT.

28 Sec. 8. Title 33, chapter 16, article 1, Arizona Revised Statutes, is
29 amended by adding section 33-1818, to read:

30 33-1818. Amendment to declaration by members

31 A. NOTWITHSTANDING ANY PROVISION IN THE COMMUNITY DOCUMENTS, FOR ANY
32 PLANNED COMMUNITY IN WHICH THE DECLARANT OWNS OR CONTROLS LESS THAN THREE PER

1 CENT OF THE SEPARATE LOTS, THE MEMBERS OF THE PLANNED COMMUNITY MAY AMEND THE
2 DECLARATION BY A VOTE OF AT LEAST TWO-THIRDS OF THE MEMBERSHIP.

3 B. THIS SECTION DOES NOT APPLY TO THE MODIFICATION OF PROVISIONS OF THE
4 COMMUNITY DOCUMENTS THAT DO ANY OF THE FOLLOWING:

5 1. EXPRESSLY REQUIRE DECLARANT CONSENT.
6 2. REQUIRE THE EXCLUSIVE USE OF ONE OR MORE BUILDERS FOR THE PLANNED
7 COMMUNITY.

8 3. REGULATE THE TRANSITION FROM DECLARANT CONTROL OF THE PLANNED
9 COMMUNITY TO NONDECLARANT OWNER CONTROL.

10 4. AFFECT THE USE OF AND ACCESS TO THE AMENITIES OF THE PLANNED
11 COMMUNITY AND ANY PROPERTY NOT OWNED BY THE PLANNED COMMUNITY FOR THE GUESTS
12 AND INVITEES OF THE DECLARANT OR OF THE MEMBERS AS PROVIDED IN THE COMMUNITY
13 DOCUMENTS, INCLUDING USE AND ACCESS FOR MARKETING PURPOSES AND USE OF AND
14 ACCESS TO EASEMENTS.

15 5. AFFECT THE USE OR DISPOSITION OF COMMON AREAS IN THE PLANNED
16 COMMUNITY.

17 6. AFFECT THE AMOUNT OR LEVEL OF ASSESSMENTS ON LOTS OWNED BY THE
18 DECLARANT.

19 C. THIS SECTION DOES NOT APPLY TO:
20 1. A PLANNED COMMUNITY THAT PRESCRIBES A MINIMUM AGE FOR OWNERSHIP OR
21 OCCUPANCY OF THE PLANNED COMMUNITY IN COMPLIANCE WITH FEDERAL LAW.

22 2. A PLANNED COMMUNITY IN WHICH OWNERSHIP INCLUDES THE REQUIREMENT OF
23 MEMBERSHIP IN A MASTER ASSOCIATION IN ADDITION TO REQUIRING MEMBERSHIP IN THE
24 PLANNED COMMUNITY ASSOCIATION.

25 3. A PLANNED COMMUNITY WITH SEVEN HUNDRED FIFTY OR MORE UNITS."

26 Renumber to conform

27 Amend title to conform

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